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Attorneys for Defendant and Counterclaim-Plaintiff Novell, Inc.

IN THE UNITED STATES DISTRICT COURT**DISTRICT OF UTAH, CENTRAL DIVISION**THE SCO GROUP, INC., a Delaware
corporation,

Plaintiff,

vs.

NOVELL, INC., a Delaware corporation,

Defendant.

Case No. 2:04CV00139

**[PROPOSED ORDER]
ORDER GRANTING
NOVELL, INC.'S DAUBERT MOTION
TO DISQUALIFY DR. GARY PISANO**

Judge Ted Stewart

AND RELATED COUNTERCLAIMS.

This matter is before the Court on “Novell, Inc.’s *Daubert* Motion to Disqualify Dr. Gary Pisano” (the “Motion”), filed in behalf of Defendant and counterclaim-Plaintiff Novell, Inc. (“Novell”) in the above-captioned action. The Court, having considered the arguments and submissions of the parties in connection with the Motion, and being fully advised in the premises, GRANTS the Motion, and finds and orders as follows:

FINDINGS

1. Dr. Pisano’s proposed opinion testimony regarding but-for market penetration does not satisfy the requirements of Federal Rules of Evidence 702 and 703 because:
 - a. Dr. Pisano’s opinion is based on a survey regarding which he lacks sufficient foundational knowledge;
 - b. Dr. Pisano’s opinion is based on a survey that does not address price or need and therefore cannot be used to measure demand;
 - c. Dr. Pisano’s hypothesis that concern with indemnification is a proxy for willingness to purchase a SCOSource license is not based upon sufficient facts or data; and
 - d. Dr. Pisano has not ruled out obvious alternative explanations for Linux users’ decisions not to buy SCOSource licenses.
2. Dr. Pisano’s proposed opinion testimony as to the size of the licensing market is inadmissible under Federal Rules of Evidence 402 and 403 because it is irrelevant and likely to cause confusion and mislead the jury regarding damages.

ORDER

Novell Inc.'s *Daubert* Motion to Disqualify Dr. Gary Pisano is GRANTED. Dr. Pisano's testimony and expert report will be precluded from presentation at trial and Dr. Pisano will not be permitted to testify.

Dated: _____

Hon. Ted Stewart
United States District Court Judge

Respectfully Submitted By:

WORKMAN | NYDEGGER A PROFESSIONAL CORPORATION
MORRISON & FOERSTER LLP

By: /s/ Sterling A. Brennan
Sterling A. Brennan

Attorneys for Defendant Novell, Inc.